

distributing them to the Administrative Law Judge and others, as required by this part.

Interested person means a person who, as provided in §20.404, files written comments on a proposed class II civil penalty assessment or files written notice of intent to present evidence in any hearing held on the proposed class II civil penalty assessment.

Mail includes U.S. first-class mail, U.S. certified mail, U.S. registered mail, or an express courier service.

Motion means a request for an order or ruling from an Administrative Law Judge.

Party means a respondent or the Coast Guard.

Person includes an individual, partnership, corporation, association, public or private organization, or a government agency.

Personal delivery includes hand delivery or use of a contract or express courier service. “Personal delivery” does not include the use of government interoffice mail service.

Pleading means a complaint, an answer, any document and any amendment to a document permitted under this part.

Respondent means a person charged with a violation in a complaint issued under this part.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994, as amended by CGD 96-026, 61 FR 33662, June 28, 1996]

§20.103 Construction and waiver of rules.

(a) These rules will be construed to secure a just, speedy, and inexpensive determination in every class II civil penalty proceeding.

(b) Except to the extent that a waiver would be contrary to law, the Commandant, the Chief Administrative Law Judge or a presiding Administrative Law Judge may, after notice, waive any of these rules to prevent undue hardship or manifest injustice, or if the expeditious conduct of a case so requires.

Subpart B—Administrative Law Judges

§20.201 Assignment.

An Administrative Law Judge, assigned by the Chief Administrative Law Judge following receipt of the complaint, shall preside over each class II civil penalty proceeding.

§20.202 Powers.

The Administrative Law Judge shall have all powers necessary to the conduct of fair, expeditious, and impartial hearings, including the power to—

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas authorized by law;
- (c) Rule on motions;
- (d) Order discovery as provided in this part;
- (e) Hold hearing or settlement conferences;
- (f) Regulate the course of hearings;
- (g) Call and question witnesses;
- (h) Issue decisions;
- (i) Exclude any person from a hearing or conference for disrespect, disorderly or rebellious conduct; and
- (j) Take any other action consistent with law and Coast Guard policy authorized by the Chief Administrative Law Judge.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§20.203 Unavailability.

(a) In the event that an Administrative Law Judge is unable to perform the duties described in §20.202 or otherwise becomes unavailable, the Chief Administrative Law Judge shall designate a successor.

(b) If a hearing has been commenced and an Administrative Law Judge is unable to proceed, a successor Administrative Law Judge may proceed with a hearing in a case. The successor Administrative Law Judge may, at the request of a party, recall any witness whose testimony is material and disputed and who is available to testify again without undue burden. The successor Administrative Law Judge may,

within his or her discretion, recall any other witness.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

§20.204 Withdrawal or disqualification.

(a) An Administrative Law Judge may at any time disqualify herself or himself.

(b) Prior to the filing of the Administrative Law Judge's decision, either party may move that the Administrative Law Judge disqualify herself or himself on the ground of personal bias or other disqualification, by filing with the Administrative Law Judge promptly upon discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(1) The Administrative Law Judge shall rule upon the motion, stating the grounds for the ruling. If the Administrative Law Judge concludes that the motion is timely and has merit, the Administrative Law Judge shall disqualify herself or himself and withdraw from the proceeding. If the Administrative Law Judge does not disqualify herself or himself and withdraw from the proceeding, the Administrative Law Judge shall proceed with the proceeding, or if a hearing has been concluded, proceed with the issuance of a decision.

(2) An Administrative Law Judge's denial of a motion for disqualification may be appealed to the Commandant at the conclusion of the hearing according to the procedures in subpart J of this part. When the appeal is made, the Administrative Law Judge forwards the motion and supporting affidavits or sworn statements with the ruling to the Commandant.

§20.205 Ex parte communications.

Ex parte communications are governed by section 557(d) of the Administrative Procedure Act (5 U.S.C. 557(d)).

§20.206 Separation of functions.

(a) An Administrative Law Judge may not be responsible to or subject the supervision or direction of an officer, employee, or agent engaged in the performance of investigating or prosecuting functions for the Coast Guard.

(b) No officer, employee, or agent of the Coast Guard engaged in the performance of investigations or prosecutorial functions in connection with any class II civil penalty proceeding shall, in that proceeding or one that is factually related, participate or advise in the decision of the Administrative Law Judge or the Commandant on appeal, except as a witness or counsel in the proceeding or appellate review.

[CGD 91-228, 59 FR 15022, Mar. 30, 1994; 59 FR 45757, Sept. 2, 1994]

Subpart C—Pleadings and Motions

§20.301 Representation.

(a) A party may appear either without counsel or other representatives, by an attorney, or by other duly authorized representative. An attorney or other duly authorized representative shall file a notice of appearance. The notice must indicate—

(1) The name of the case, including docket number if assigned;

(2) The person on whose behalf the appearance is made; and

(3) The person's and representative's mailing addresses and telephone numbers.

(b) Notice, including the items listed in paragraph (a) of this section, must also be given for any withdrawal of appearance.

(c) An attorney shall be a member in good standing of the bar of the highest court of a State, the District of Columbia, or any territory or commonwealth of the United States. A personal representation of membership is sufficient proof, unless otherwise ordered by the Administrative Law Judge.

(d) Any person who is not an attorney shall file a statement setting forth the basis of his or her authority to act as a duly authorized representative. The Administrative Law Judge may deny appearance as a representative to any person whom the Administrative Law Judge finds does not possess the requisite qualifications to represent others or is lacking in character, integrity, or proper personal conduct.